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THE USE OF RESTRICTED AIR FORCE TECHNOLOGIES
IN JOINT FEDERAL INVESTIGATIONS

By

Bruce James Mahler

Policy Paper

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In Partial Fulfillment of the Requirements

for the Degree of

Master of Science

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ABSTRACT

The purpose of this paper is to show the factors involved in the formulation, adoption, and implementation of actual policy changes in a "real world" situation. The problem identification, needs assessment, policy development, and implementation accomplished in this study were a direct result of requests for assistance from the United States Customs Service (USCS) to the United States Air Force (USAF).

USCS, through their project "Exodus", was attempting to procure restricted USAF items from the Military Controlled Technologies List (MCTL) for use in "reverse-sting" operations. A program evaluation of the current USAF policy revealed the system in place was not effectively responsive to this type of request. A new policy, implemented through the Air Force Office of Special Investigations (OSI), of conducting joint Technology Transfer (T2) investigations, with OSI procuring the MCTL items, has proven successful.

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GLOSSARY OF ABBREVIATIONS

AFOSIR - Air Force Office of Special Investigations Regulation
AFR - Air Force Regulation
DOJ - Department of Justice
DOD - Department of Defense
FFIS - Friendly Foreign Intelligence Service
GRU - Soviet Military Intelligence
HIS - Hostile Intelligence Service
HIO - Hostile Intelligence Officer
HQ USAF - Headquarters United States Air Force
HQ AFOSI/IVOX - Headquarters Air Force Office of Special
Investigations Systems Protection and Technology Transfer Branch

KGB - Soviet State Security
MCTL - Military Controlled Technologies List
OSI - United States Air Force Office of Special Investigations
PRC - People's Republic of China
SDI - Strategic Defense Initiative
SST - Special Services Team
TQM - Total Quality Management
T2 - Technology Transfer Investigations
USAF - United States Air Force
USC - United States Code
USCS - United States Customs Service

CHAPTER I

THE PROBLEM

Prior to the spring/summer time frame of 1990, the United States Air Force (USAF), through its Office of Special Investigations (OSI), had not formulated a specific policy regarding the use of restricted USAF controlled and critical technologies in joint federal investigations. No clear guidance existed on how to provide export restricted items from the Military Controlled Technologies List (MCTL) (i.e. weaponry, munitions, spare parts, computer hardware and software, etc...) to agencies outside of the USAF for use in law enforcements operations — specifically, reverse stings (sale of items by undercover officers to the perpetrators in a buy/bust scenario).

The greatest requestor for this support was the United States Customs Service (USCS) through their project "Exodus." Exodus is a program designed to identify and neutralize the illegal sale, transfer, and export of restricted controlled and critical U.S. technologies.

Because USCS has primary investigative jurisdiction over illegal exports, OSI had previously seen its role in technology

transfer as strictly support to USCS, not really providing any investigative activity (IVOX Handbook, 1989). As a result, OSI played a role only as a facilitator for these requests.

Requests from USCS, or any other law enforcement agency, were handled in accordance with Air Force Regulation (AFR) 55-35, "Air Force Assistance to Civilian Law Enforcement Officials" (Atch 1). AFR 55-35 is designed to provide equipment and facilities on loan, or for a fee, to local law enforcement agencies -- specifically, in drug related investigations. It is not really designed to handle requests for the use of MCTL items. All requests under AFR 55-35 are forwarded to Headquarters USAF (HQ/USAF) for approval. The following is a list of personnel and offices involved in the approval process under AFR 55-35:

1. The Assistant Secretary of the Air Force
(Manpower, Reserve Affairs and Installations)
2. The Civil Law Enforcement Support Steering Group
(Joint Air Force Secretariat or Air Staff Activity)
3. Deputy Chief of Staff for Plans and Operations
Directorate of Operations (HQ USAF/XOO)
4. Deputy Chief of Staff for Logistics (HQ USAF/LE)
5. Comptroller of the Air Force (HQ USAF/AC)
6. Deputy Chief of Staff for Personnel (HQ USAF/DP)
7. Deputy Chief of Staff Research and Development
(HQ USAF/RD)

8. Office of the Staff Judge Advocate General (HQ USAF/JA)
9. Assistant Chief of Staff Intelligence (HQ USAF/IN)
10. Office of Public Affairs (SAF/PA)
11. Deputy Assistant Inspector General for Security Police (HQ USAF/IGS)
12. National Guard Bureau (NGB/XOO)
13. Air Force Reserve (HQ USAF/REO)
14. Commanders of Major Commands
15. Commanders of Local Installations and Units.

An in-depth program evaluation of AFR 55-35 was conducted at both the OSI field and headquarters level. The evaluation determined that the protocols listed in the regulation were not responsive to "real-time" requests for OSI assistance in technology transfer investigations as the current process was very convoluted and a bureaucratic nightmare. The approval process could take from a matter of days to months, depending upon the nature and scope of the request. This program evaluation will be looked at in more depth in Chapter V.

CHAPTER II

LITERATURE REVIEW

A review, at the time, of pertinent literature revealed the hostile intelligence threat, specifically regarding the illegal sale, transfer, and export of controlled and critical technologies was on the rise. Since 1945, the Soviet Union's Komitet Gosudarstvennoy Bezopasnosti (KGB) and Glavnoye Razvedyvatelnoye Upravleniye (GRU) have maintained aggressive intelligence gathering programs aimed at obtaining Western (Specifically U.S.) military and diplomatic information relating to codes, troop movements, warplans, negotiations, etc.... More recently the trend has turned towards procuring military technologies, dual use (military and civilian) technologies, and industrial technologies. It was estimated in 1985 there were approximately 4250 diplomats, commercial officials, and other representatives from communist countries in the United States, of which 2100 were from the Soviet Union and Warsaw Pact. Though not all were actual agents of an hostile intelligence service (HIS) it is conceivable to believe all were pre-briefed and debriefed on their respective assignments or trips.

A goal in Soviet-Western scientific exchanges, for example,

is to gain access to Western technological know-how. Soviet participation in scientific exchanges enables the Soviets to acquire and exploit Free-World technologies. Among the agencies charged with fulfilling collection requirements,"are not only the KGB and GRU, but also the USSR Academy of Sciences and the State Committee for Science and Technology, both of which are official-above board-partners in scientific exchanges with the West (Soviet Military Power, 1987)." Using unscrupulous Western traders who employ false licenses, deceptive equipment descriptions, dummy firms, and false end users for illegal purchases; smuggling; and assistance from Soviet and allied intelligence operations, the USSR has acquired several thousand pieces of major microelectronics fabrication equipment. This equipment is largely responsible for the advances the Soviet microelectronics industry has made thus far. This progress has reduced the overall Western lead in microelectronics from 10 to 12 years in the mid-1970's to 4 to 6 years today (Soviet Military Power, 1987).

It was noted as late as 1990, after the fall of the Warsaw Pact and Communism in Eastern Europe, that the Soviet intelligence services were still involved in extensive illegal activity directed towards the acquisition of sensitive Western technologies. Secretary of Defense Dick Cheney had this to say

about the KGB and Soviet threat, "The Soviet threat is changing, but it is not going away. As we watch that change, dispassionate analysis becomes more, not less, important" (Soviet Military Power, 1990).

This was the Soviet threat as it existed during the spring/summer time frame of 1990, technology was a priority. This was one of the factors (Soviet threat) considered when formulating the new USAF/OSI policy. Before going on to the other technology transfer (T2) issues involved in this policy change (friendly foreign intelligence service (FFIS) threat and third world threat) I would like to address the current threat from the former Soviet Union.

First, we must recognize that the KGB and GRU still exist, they did not die with the Soviet Union. Instead, what we find are not two organizations within one monolithic structure (USSR), but numerous independent republics, each with their own organ of the KGB, and dependent upon how the military is ultimately structured, potentially each with their own military intelligence agency. When these independent republics begin opening their own embassies and consulates in the United States, the potential increase in hostile intelligence activity in this country is frightening. It is arguable that the requests for controlled and critical technologies, specifically industrial

technology, will significantly increase. In order to compete in their new market-based economies (and initially not just to compete but to survive) these new republics will find the acquisition of these industrial technologies a priority, especially in light of the former Soviet Union's legacy of a fragmented industrial base and lack of innovative ability (Soviet Military Power, 1990).

Already we are hearing of a potential "brain-drain" from the former Soviet Union. There are approximately 100,000 atomic scientists, engineers, and technicians in the former Soviet Union, 3000 of whom held top-secret clearances. The average monthly salaries for these individuals was \$15. Current legislation introduced by Russian Federation President Boris Yeltsin would boost this salary to \$75 a month (Newsweek, 17 Feb 92). Compare this to a published, but unverified, report in the Arabic-language magazine, Al-Watan Al-Arabi, that Iran hired more than 50 Soviet nuclear experts at monthly salaries of \$5000 to assemble (nuclear) bombs (Lansing State Journal, 24 Jan 92). If the republics are losing their scientists, as stated in this article, and with their lack of innovative ability, we must be very cognizant of the potential threat to our controlled and critical technologies from these, potentially desperate, republics. The "National Priority Technology Programs" of the Soviet Union as of July 1990 are listed in Table 2-1. The

"USSR/US Technological Capabilities" as of July 1990 are listed in Table 2-2. It is assumed that these areas have not significantly changed with the breakup of the Soviet Union and the appearance of independent republics.

Table 2-1

NATIONAL PRIORITY
TECHNOLOGY PROGRAMS

- High Energy Physics
- High Temperature Superconductivity
- Genetics
- Future Information Technologies
- Technologies, Machines, and Production of the Future
- Advanced Materials
- Advanced Biotechnology Methods
- High-Speed, Environmentally Clean Transport
- Environmentally Clean Energy Generation
- Resource Saving and Environmentally Clean Production Processes in Metallurgy and Chemistry
- Efficient Food Production
- Fight Against Widespread Disease
- Advanced Construction Technologies
- Exploration of Mars
- Controlled Thermonuclear Fusion

(Soviet Military Power, 1990)

Table 2-2

USSR/US
TECHNOLOGICAL CAPABILITIES

	USSR/US
SEMICONDUCTOR MATERIALS	
MICROELECTRONIC CIRCUITS	D
SOFTWARE PRODUCTIBILITY	D
PARALLEL COMPUTER ARCHITECTURES	D
MACHINE INTELLIGENCE AND ROBOTICS	D
SIMULATION AND MODELING	D
PHOTONICS	C
SENSITIVE RADARS	D
PASSIVE SENSORS	D
SIGNAL PROCESSING	C
SIGNATURE CONTROL	C
WEAPON SYSTEM ENVIRONMENT	B
DATA FUSION	C
COMPUTATIONAL FLUID DYNAMICS	D
AIR BREATHING PROPULSION	C
PULSED POWER	A
HYPERVELOCITY PROJECTILES	B
HIGH ENERGY DENSITY MATERIALS	B
COMPOSITE MATERIALS	C
SUPERCONDUCTIVITY	C
BIOTECHNOLOGY MATERIALS AND PROCESSES	C

POSITION OF USSR RELATIVE TO THE US
(as of July 1990)

A = Significant lead in some niches of technology

B = Generally on a par with the U.S.

C = Generally lagging except in some areas

D = Lagging in all important aspects

(Soviet Military Power, 1990)

Besides the Soviet threat, the potential threat from FFIS and third world countries played a major part in the formulation of a workable policy.

On March 4th, 1986 Jonathan Jay Pollard was convicted and sentenced to life imprisonment, and his wife Anne Henderson Pollard to 5 years, for violation of Title XVIII United States Code Section 794 (c), "Gathering or delivering defense information to aid a foreign government." A day earlier a federal grand jury indicted Colonel Aviem Sella, Israeli Defense Force, Base Commander of Ramon Air Base Israel, on three espionage charges: conspiring to deliver to Israel information related to the national defense of the United States, causing documents to be delivered to Israel knowing that they contained United States national defense information that would be used to the advantage of Israel, and unlawfully receiving classified information from an employee of the United States (Blitzer, 1989). Sella was Pollard's intelligence contact, his handling agent. It should be noted that Pollard passed not only classified information to Sella, but also passed controlled and critical technical information concerning advanced F-16 avionics.

Currently, Israel is suspected of transferring U.S. weapons technology to other countries (China and South Africa) without

U.S. approval. The systems included the air-to-air Python missile, which contains U.S. components and is based on the USAF Sidewinder missile (Lansing State Journal, 14 Mar 92).

Another example of the threat from FFIS is currently being played out in Federal Court for the Central District of California in Los Angeles. A joint USCS/OSI investigation (post policy change) resulted in the arrest and trial of a southern California computer expert, Ronald Hoffman, accused of attempting to deliver critical and controlled technologies (computer software) to representatives of the Japanese and South African governments. This example will be looked at in more detail in Chapter VI.

Finally, the third world threat is growing and technology is a target. "The People's Republic of China (PRC) has several intelligence services whose personnel are represented among the approximately 1500 Chinese diplomats and commercial communities located at some 70 PRC establishments, and offices in the United States. They also have some access to the approximately 15,000 Chinese students and 10,000 individuals arriving in 2700 delegations each year....the PRC services concentrated primarily on advanced technology not subject to release for further PRC modernization in the 1990's and beyond....In 1985 Larry Wu-Tai Chin, a retired CIA foreign media analyst, was charged and

convicted for spying for the Chinese (Crawford, 1988)."

The Chinese are not the only third world threat operating in the United States. Iran, Iraq, Syria, Cuba, North Korea, and Lybia, along with some of the former Warsaw Pact countries (specifically Poland & Hungary), and even some of our middle-eastern allies (Saudi-Arabia & United Arab Emirates), just begin to identify how wide and diverse the threat really is. Recently, the requests for technologies and trans-shipments of arms to these countries have increased. It was a request from one of these third world countries that acted as the catalyst in this policy change. This case will be analyzed in Chapter IV.

On January 22nd, 1992, German officials revealed they had seized American-made laser rocket building equipment during December 1991 just moments before a plane carrying it took off for Lybia. Chief government spokesman Dieter Vogel said the cargo contained dual use parts which could be used for nuclear technology (Lansing State Journal, 23 Jan 92). A little more than a week later the Germans reported that after a frantic high-seas search, German warships in the Mediterranean turned back a German freighter that was headed for Syria with a load of T-72 tanks (Lansing State Journal, 31 Jan 92).

So, as we can see, a significant intelligence threat to United States national security existed during the time frame of

the policy change, and still exists from the republics of the former Soviet Union along with a third world threat, which is on the rise, and a threat as documented in the Pollard affair, from some of our allies. The intelligence threat is increasing and changing, technology is the target. Recognizing the threat as it existed, and the need to expand its role in T2 investigations, led agents of the OSI Los Angeles field office to seek alternatives to using the unworkable protocols previously described in AFR 55-35.

CHAPTER III

POLICY OPTIONS

Several options were addressed regarding OSI's response to requests for the use of restricted USAF technologies in law enforcement operations. First, OSI could turn away the requestor stating that the request was not workable. This was not really a valid option as it would sour interagency relations with the requestor and it would allow the "bad guys" to operate unabated to try some other avenue to obtain the items.

A second option was to try to modify the guidance supplied by AFR 55-35 to fit the needs of T2 investigations, but this turned out to be an unworkable situation as the regulation allowed no room for compromise.

The option finally taken was that a policy already did exist, it just needed to be articulated. That was the task the OSI field agents undertook. Under Title 10 USC, OSI is granted full power and authority as a federal law enforcement/investigative agency in criminal, fraud, and counter-intelligence matters regarding the Department of the Air

Force. Also, AFR 124-12 "Investigating Criminal Matters with the Department of Justice, DOD Directive 5525.7, and Memorandum of Understanding Between the Department of Justice and Department of Defense Relating to the Investigation and Prosecution of Certain Crimes - January 22nd, 1985" (Atch 2), delineates the investigative process and the FBI's role in OSI investigations. It was determined from these documents and the general USAF policy of providing OSI with all the support necessary, from all USAF units, in resolving OSI investigations, that as long as there was an USAF or DOD concern in an investigation, a joint T2 investigation could proceed. USAF commanders would provide OSI with MCTL items, which would stay in OSI's control at all times during the investigation. No approvals would be required as the items would never leave OSI's custody. This general idea, or theory, was the basis for the update and rewrite of AFOSI Regulation 124-65 "Technology Transfer Investigations" dated 14 Nov 1990 (Atch 3). The new policy reads, in part, as follows:

Use of Air Force Related Technologies, Equipment, or Information During Joint Investigative Activity with Civilian Law Enforcement. AFOSI is authorized to conduct joint investigations with civilian law enforcement when there is a direct USAF interest. AFOSI is the single point of contact with civilian law enforcement regarding investigative activity. USCS and the FBI are defined as civilian law enforcement in AFR 55-35, Air Force Assistance to

Civilian Law Enforcement. Should a civilian law enforcement agency contact AFOSI with information concerning illegal technology transfer of Air Force materials, wishing to conduct a joint investigation, and requesting AFOSI obtain USAF materials for use in a "buy-bust" activity, AFOSI is authorized to do so.

a. In this investigative activity it must be made clear the material, e.g., Maverick missile, is being loaned from an Air Force activity, such as wing, depot, or MAJCOM commander to AFOSI. The material is not being loaned to the civilian law enforcement agency. AFOSI can coordinate all material acquisition and logistics with the loaning activity, but AFOSI must maintain custody, protection, and responsibility at all times. This requires AFOSI agents to be present with the joint investigative agency during the "buy-bust" to ensure the material does not leave AFOSI custody. Custody, protection, and responsibility can be afforded through appropriately approved technical means.

The genesis of this whole process, along with the activities and inputs of the decision-makers and how the policy was actually formulated, are detailed in the following case study.

CHAPTER IV

CASE STUDY

In March 1990, agents from the USCS Los Angeles field office "Exodus" branch approached the OSI Los Angeles field office detachment commander and the writer soliciting assistance in acquiring USAF critical technologies to be used in an on-going USCS investigation of a middle-eastern arms smuggling ring operating in the Los Angeles area. Allegedly, individuals covertly representing the governments of six middle-eastern countries (Iran, Iraq, Syria, Jordan, United Arab Emirates, and Saudi Arabia) were trying to obtain items from the MCTL. These items included Stinger (handheld surface-to-air), Sidewinder (air-to-air), Maverick (air-to-air) missiles, Cluster Bomb Units (air-to-ground), and assorted spare parts. USCS wanted to use these items as "flash" in a "buy-bust" scenario. They were operating on a short time-table and with limited funds. After initial coordination with the District Headquarters and HQ AFOSI/IVOX (Systems Protection and Technology Transfer Branch), it was determined OSI could proceed with this operation as with any other joint investigation. OSI would procure the items and maintain operational and physical control by conducting a

joint investigation with USCS, to include providing undercover OSI agents. USCS agreed with this noting they had no expertise concerning these types of weapons. Operations plans were prepared and approved and the operation was initiated. Initial meetings with the subjects were conducted in London by USCS and OSI undercover agents. Two subjects, representing two separate governments, agreed to travel to the United States (southern California area) to inspect and purchase the items

Because of the high level nature of this case, The Inspector General (TIG) of the Air Force, who reports directly to the Secretary of the Air Force, was briefed weekly on the operation by HQ AFOSI/IVOX. As a result the Air Staff, consisting of the Chief of Staff (a member of the Joint Chiefs of Staff) and his staff, raised a question of policy and ordered an immediate halt to the operation. The Air Staff, though very much in favor of the operation, believed approval for the use of these critical items had to be staffed through, and approved by, HQ USAF through the Secretary of the Air Force's Office as outlined in AFR 55-35 (Atch 1). They were also under the misconception that these items had been turned over to USCS and were out of USAF control.

The Air Staff's concern was understood, but it was felt they were comparing apples to oranges, the items would never leave

USAF/OSI control, so AFR 55-35 wasn't applicable. Though it was known this was the case there was no USAF nor OSI policy or regulation which articulated this position. So it became OSI's job, with the help of HQ AFOSI/IVOX, to formulate and sell a new policy to the Air Staff.

CHAPTER V
POLICY FORMULATION

An intense period of research revealed that AFR 124-12, DOD Directive 5525.7 and the DOJ/DOD MOU (Atch 2) along with AFR 23-18, OSI's charter that makes OSI the USAF liaison with all federal and local law enforcement, firmly established OSI's position to conduct joint investigative operations with local law enforcement agencies. Next OSI determined the approval requirements of AFR 55-35 were not applicable as the MCTL items would never leave USAF control. They were not being "loaned" to USCS for their investigation, but were being used by OSI, an USAF entity, for its primary mission — investigating crimes affecting or relating to the Department of the Air Force. Armed with this information, HQ AFOSI/IVOX persuaded the Air Staff that their approval wasn't necessary and OSI proceeded with the operation.

During HQ AFOSI/IVOX's briefing to the Air Staff it became readily apparent that the Air Staff was very interested in this type of investigative operation. This is only conjecture, but it may be that the Air Staff could already see the upcoming downsizing of the military (resulting from the peace dividend)

and was eager to reach out to new and diversified missions in an attempt to bolster the Air Force's future budgetary position. At the same time this was occurring, DOD was expanding its role in the war on drugs after years of shying away from any expanded role, possibly for the same budgetary concerns. The Air Staff may have been following DOD's lead. Whatever the reason, the Air Staff's decision was correct as it was definitely within OSI's purview to proceed with the operation, both legally and from a policy standpoint.

As an aside, the Air Staff's interest in this operation can be appreciated by looking at their attempt to get involved in the actual operational planning of the operation. During one of HQ AFOSI/IVOX's briefings, the Air Staff requested OSI "plant" remote detonating devices, on the munitions to be used in the operation, to ensure they would not get into the wrong hands. HQ AFOSI/IVOX assured the Air Staff this was not required as both the USCS and OSI would have well armed Special Services Teams (SST) in the area who would prevent any such action. Also, it was explained that the subjects were bringing their own experts to inspect the items and that remote detonating devices would surely be noticed. After this there were no further attempts by the Air Staff to assist in operational planning.

CHAPTER VI

IMPACT ASSESSMENT

This policy decision has allowed for a more aggressive and responsive role by OSI in T2 investigations. Liaison with USCS has increased and all OSI units now have the protocol to facilitate requests for MCTL items from USCS and other law enforcement agencies on a "real-time" basis. The approval process prior to and after the policy change are shown in the flow charts (Figures 6-1 & 6-2). As can be seen, the process after the policy change is much more streamlined and responsive.

Since the inception of this policy change, several major USCS/OSI T2 investigations have taken place. With each investigation the levels of cooperation between agencies have improved and each agency has recognized the value of this type of interagency operation.

Though no prosecutions resulted from the case that formulated this policy, the investigation did provide a valuable service. Besides formulating the current policy and providing an increased level of interagency cooperation, this investigation did identify, and effectively neutralize, a major middle-eastern arms smuggling ring just prior to the onset of

the Gulf War (Operation Desert Shield/Storm). Subsequent investigations have been even more successful.

The Hoffman case (identified in Chapter II) revealed that friendly countries are also involved in illegally procuring MCTL items. In this case Hoffman, a former employee of a Defense Contractor (SAIC Corporation Los Angeles, CA) attempted to sell restricted computer software which he developed at SAIC for the Air Force. This software was used in a Strategic Defense Initiative (SDI) program for monitoring Soviet missile launches via "plume signatures" (identify launches by characteristics of rocket plumes). USCS and OSI initiated a T2 investigation. The USAF, through Space Systems Division, provided MCTL items and technical expertise to OSI for use in the investigation. This investigation was important as the crux of the prosecution was based not so much on the actual transfer of MCTL items as of the transfer of ideas, concepts, and techniques.

As this case shows, technology transfer involves three basic concepts: (1) the export of an array of design manufacturing information plus significant teaching assistance which provides technical capability to design, optimize and produce a broad spectrum of products in a technical field; (2) the export of manufacturing equipment required to produce,

inspect, or test strategically related products, with only the necessary "point design" information; and (3) the export of products with technological "know-how" supplied in the form of extensive operating information, application information, or sophisticated maintenance procedures (HQ AFOSI/IVOX Handbook, 1989). Hoffman's case is currently being litigated in the U.S. District Court for the Central District of California, a conviction is expected.

Another impact of this policy has been to take the decision-making responsibility away from the Air Staff and HQ USAF and place it at the lowest level possible -- the operational commander. This policy is more in line with the Total Quality Management (TQM) philosophy now being implemented in the USAF and reflects the increased responsibility and authority delegated to the operational commanders.

Figure 6-1
AFR 55-35
Air Force Assistance to Civilian Law Enforcement
Critical Technologies Approval Process

Approval/Disapproval
Assistant Secretary
of the Air Force

^

HQ USAF
Directorate of Operations

^

Air Force Operations Center

^

Major Command

^

USAF
Operational Owner

^

Air Force Office of Special Investigations

^

Requestor

Figure 6-2
AFOSIR 124-65
Technology Transfer Investigations

Critical Technologies Approval Process

Approval/Disapproval
USAF
Operational Owner

^

Air Force Office of Special Investigations

^

Requestor

CHAPTER VII

CONCLUSIONS

Since the mid-1980's, there has been an ever increasing threat to the restricted critical and controlled technologies of the United States. This threat is not limited to only military technologies, but also to dual use and industrial technologies. The threat comes not only from our adversaries, but from our allies as well and is increasing at an alarming rate. With all the geo-political changes taking place in the world one thing remains constant — the need to compete, and the need for the technologies to make one competitive.

Because of this increasing threat, law enforcement agencies who conduct T2 investigations need to become more cognizant of the threat and its effect on national security.

The USAF and OSI met this threat "head-on" by implementing a policy change that not only satisfied an identified need (to obtain and jointly use MCTL items on a "real-time" basis in T2 investigations) but showed that rapid change is possible in a large bureaucracy. This policy change has expanded OSI's role in T2 investigations from that of a facilitator of requests, to an equal partner in major joint investigations. It has also

resulted in the resolution of some major cases (original case and Hoffman case) with national security implications.

In order for OSI to develop this policy even further it will become necessary for every OSI office to take an active part in T2 investigations. Historically, OSI has had offices that work, or like to work, only certain type of crimes — usually drugs. Other case types are worked, but not as aggressively. Liaison must be maintained with the servicing USCS office and programs must be developed to inform other agencies with an interest in T2 that OSI can and will assist in these types of investigations. Also, security managers for defense contractors must be made aware of OSI's interest in requests for technologies by unauthorized entities. This is somewhat done through Operations Security (OPSEC) briefings and procedures, but more emphasis should be placed on the reporting requirements and operational aspects of "real-time" reporting of these requests.

Hopefully, this paper has shown the importance of the technology transfer question and the need for interagency cooperation and development of workable policies and procedures. The policy is now set for the rest of the USAF to follow. The safety and security of USAF restricted critical and controlled technologies is at stake.

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ATTACHMENT 1
AFR 55-35

AIR FORCE ASSISTANCE TO CIVILIAN LAW ENFORCEMENT OFFICIALS

DEPARTMENT OF THE AIR FORCE
Headquarters US Air Force
Washington DC 20330-5000

Filed 6 Jan 87
AF REGULATION 55-35

22 December 1986

Operations

AIR FORCE ASSISTANCE TO CIVILIAN LAW ENFORCEMENT OFFICIALS

This regulation implements Department of Defense (DOD) Directive 5525.5, January 15, 1986. It provides uniform policies and procedures to be followed concerning authorized support provided to federal, state, and local civilian law enforcement agencies. It also specified limitations and restrictions on using Air Force members (military or civilian and organizations at all levels of command. This regulation applies to all Air Force members, military and civilian, and all organizations at all levels of command, including Air Force Reserve and Air National Guard units and members. It does not apply to or restrict the normal and traditional Air Force law enforcement responsibilities and activities, as in enforcement under the Uniform Code of Military Justice. Major command (MAJCOM) and separate operating agencies (SOA) may supplement this regulation, provided the policies and procedures set forth by this regulation are not changed. Each supplement or separate publication which implements this regulation must be approved by HQ USAF/XOORC, Wash DC 20330-5054 before publication.

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✓ Supersedes AFR 55-35, 17 April 1984. (See signature page for summary of changes.)

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Section A—General Information

1. Regulation Purpose. This regulation prescribes US Air Force policies and procedures for providing Air Force resources in support of federal, state, and local civilian law enforcement agencies and implements Department of Defense (DOD) Directive 5525.5, 15 January 1986 (attachment 1).

2. Terms Explained:

a. **Civilian Agency.** Government agency (other than DOD) in the following jurisdictions:

- (1) The United States.
- (2) A state (or political subdivision).
- (3) A territory or possession of the United States.

b. **Civilian Law Enforcement Official.** Officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of the agency.

3. Posse Comitatus Act (18 U.S.C. 1385). This act restricts military participation in civilian law enforcement activities. It provides the following: "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both." It does not apply to or restrict the normal and traditional Air Force law enforcement responsibilities under the Uniform Code of Military Justice.

4. Military Cooperation With Civilian Law Enforcement Officials (10 U.S.C. 371-378). This act

permits a larger DOD role in support to civilian law enforcement agencies (attachment 2). This regulation sets forth the specific terms and conditions under which Air Force support may be provided.

5. Air Force Policy:

a. Department of the Air Force policy is to assist civilian law enforcement officials to the maximum extent permitted by public law.

b. Assistance may not be provided under this regulation if the provision of assistance could adversely affect national security or military preparedness. Recommendations that assistance be denied on military preparedness grounds must be supported by clear and specific evidence.

c. When unable to provide assistance due to lack of the requested resources, unit commanders attempt to locate alternate resources or recommend suitable substitutes.

6. Restrictions on Using Air Force Personnel. There are restrictions on using Air Force personnel in providing assistance to civil law enforcement officials. These include:

a. **Interdiction (interrupt or impede the passage)** of a vehicle, vessel, aircraft. For example, an aircrew may not hover or land its helicopter in front of a vehicle to prevent, stop, or alter its movement. However, the following example of Air Force support to law enforcement officials is permissible because it does not constitute an interdiction by Air Force personnel. An Air Force weapons controller may vector his or her aircraft to intercept another aircraft to identify or follow the intercepted aircraft.

b. Search or Seizure. For example, Air Force personnel may not handle a drug dog to detect the presence of drugs when requested to do so by civilian law enforcement officials.

c. Arrest or stop and frisk.

d. Surveillance (stake-out).

e. Look for or pursue criminals. For example, a special dedicated helicopter mission may not be created for this purpose.

f. As undercover agents, investigators, or interrogators.

7. Releasing Information:

a. Public Affairs Offices releasing information on Air Force support to civil law enforcement officials coordinate the proposed release with the civil law enforcement agency.

b. When assistance is provided under this regulation, the Air Force may require that it be the sole releasing authority of information concerning the Air Force assistance provided.

8. Responsibilities Assigned:

a. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations) (SAF/MI):

(1) Serves as principal advisor to the Secretary of the Air Force on all matters related to supporting to civilian law enforcement officials.

(2) Serves as the Air Force executive agent for all contacts with the ASD(FM&P) and other DOD components.

(3) Exercises approval authority for assistance requests delegated by the Secretary of the Air Force.

(4) Appoints a chairperson and executive secretary for the Air Force Civil Law Enforcement Support Steering Group.

b. The Civil Law Enforcement Support Steering Group (Joint Air Force Secretariat or Air Staff Activity):

(1) Advises the SAF/MI in his or her role as Air Force executive agent.

(2) Brings together experts from operations, legal, budget, logistics, personnel, and law enforcement staff agencies to develop support policies and procedures.

c. Deputy Chief of Staff for Plans and Operations, Directorate of Operations (HQ USAF/XOO):

(1) Serves as the HQ USAF focal point for cooperating with civilian law enforcement officials.

(2) Provides a single HQ USAF point of contact (POC) for processing requests for assistance requiring:

tance requiring:

(a) Approval within the Office of the Secretary of the Air Force.

(b) Approval within the Office of the Secretary of Defense.

(c) Submittal for review by the SAF/MI and the Joint Chiefs of Staff. Recommendations by MAJCOM commanders to disapprove requests for support involving unified or specified command resources (due to adverse national security or military preparedness impact) must be sent to the Joint Chiefs of Staff and SAF/MI.

(3) Appoints a vice chairperson and assistant executive secretary for the Air Force Civil Law Enforcement Support Steering Group.

d. The Deputy Chief of Staff for Logistics (HQ USAF/LE). HQ USAF/LE provide a single HQ USAF POC for coordinating requests for the loan of Air Force equipment or maintenance support personnel to civilian law enforcement officials.

e. The Comptroller of the Air Force (HQ USAF/AC). HQ USAF/AC provides policy and procedural guidance on costing, reimbursement, and accounting for support provided to civilian agencies.

f. The Deputy Chief of Staff for Personnel (HQ USAF/DP). The HQ USAF/DP provides a single HQ USAF POC for coordinating the loan of military personnel to civilian law enforcement agencies.

g. The Deputy Chief of Staff for Research and Development (HQ USAF/RD). HQ USAF/RD provides a single HQ USAF POC for coordinating acquisition program issues.

h. The Office of the Judge Advocate General (HQ USAF/JA). HQ USAF/JA provides a single HQ USAF POC for coordinating legal issues.

i. The Assistant Chief of Staff Intelligence (HQ USAF/IN). HQ USAF/IN provides a single HQ USAF POC for coordinating requests for US Air Force intelligence components assistance to civil law enforcement officials.

j. The Office of Public Affairs (SAF/PA). SAF/PA provides a single POC for coordinating public affairs issues.

k. The Deputy Assistant Inspector General for Security Police (HQ USAF/IGS). HQ USAF/IGS provides a single HQ USAF POC for coordinating requests for security police assistance.

l. National Guard Bureau/XOO (NGB/XOO). NGB/XOO provides a single HQ USAF POC for coordinating Air National Guard support issues, and provides an information copy of the quarterly RCS: DD-FM&P(Q)1595 report to HQ USAF/XOORC.

m. Air Force Reserve (HQ USAF/REO). HQ USAF/REO provides a single HQ USAF POC for coordinating Air Force Reserve Policy. HQ AFRES (Robins AFB GA) is the POC for operational matters in n below.

n. Commanders of MAJCOMs:

(1) Ensure that the headquarters and subordinate units at all levels establish POCs for coordination with civilian law enforcement officials.

(2) As a supporting component commander, advise the unified or specified commander when disapproval of a request for support (which involves resources in support of that unified or specified command) is recommended based on readiness or national security preparedness impact.

(3) Submit to HQ USAF/XOO requests that are assessed as having an adverse impact on national security or military preparedness or require higher authority approval or disapproval.

o. Commanders of Local Installations and Units:

(1) Establish POCs for coordinating with civilian law enforcement officials.

(2) Maintain liaison with local civilian law enforcement officials.

(3) Approve requests for assistance within their authority.

(4) Send requests for assistance beyond their authority to approve or disapprove through channels with a recommendation for approval or denial.

Section B—Processing and Reporting Procedures

9. Up-Channel Processing Procedures. A request must first be coordinated at the unit to determine capability to support the request. Requests which can be approved at the unit level can be finalized without further up-channel processing.

a. Those requests requiring approval or disapproval by higher authority are processed through channels to HQ USAF for consideration by the appropriate approval or disapproval authority (attachment 3). The following requests for support must be processed up-channel for approval or disapproval:

(1) Requests for providing the following items of equipment:

(a) Arms.

(b) Ammunition.

(c) Aircraft.

(d) Tactical automotive equipment. (For example, Armored Personnel Carriers or Peace-keeper vehicles.)

(2) Requests for using Air Force personnel to provide assistance to civilian law enforcement officials. The following are examples:

(a) Requests for assistance necessitating dedicated US Air Force resources. (For example, a request for an Air Force WC-130 mission to monitor and communicate the movement of sea traffic which cannot be supported incidental to scheduled operational or training missions. See 13 below.)

(b) Requests for Air Force personnel to operate or maintain equipment provided, or to provide training or expert advice to civilian law enforcement officials. (See section E.) When time permits, routine requests can and should be sent through normal command and staff channels, including requests for which subordinate authorities recommend denial.

b. Requests of an immediate nature are processed through the operations center system. The following guidelines apply:

(1) Requests are up-channeled to the MAJCOM or SOA operations center with full details and recommendations.

(2) The MAJCOM or SOA operations center contacts the office of primary responsibility or staff duty officer to accomplish coordination with the MAJCOM HQ or SOA (for example, LG for vehicles or munitions, DO for aircraft, DP for personnel, SP for police equipment, etc.) After coordination is completed at the MAJCOM or SOA level, the request and recommendations are sent to the Air Force Operations Center.

(3) The Air Force Operations Center contacts the HQ USAF/XOORC POC to coordinate the action within headquarters. When the HQ USAF/XOORC POC has coordinated the request, he or she contacts SAF/MIZ, briefs the situation, and provides a recommendation.

(4) SAF/MIZ coordinates the request within the Secretariat and with ASD(FM&P), as appropriate. Once the final decision has been made at the appropriate level, SAF/MIZ contacts the HQ USAF/XOORC POC and relays the official approval or disapproval decision. The HQ USAF/XOORC POC relays this information back to the Air Force Operations Center which down-channels the approval or disapproval through the MAJCOM or SOA operations center.

(5) All telephone requests up-channeled to SAF/MIZ are immediately followed up by message or letter from the MAJCOM or SOA.

c. Up-channeled request must include, but not necessarily be limited to:

(1) Requesting agency.

(2) Date request received.

(3) Support requested:

(a) Equipment (item or quantity).

(b) Personnel:

1. Expert advice.

2. Training.

3. Maintain Equipment.

4. Other (specify).

(4) Inclusive dates for requested support.

(5) Approval or denial recommendation.

Give rationale for denial recommendation (for example, local, county, state, or other agencies are able to provide requested support; readiness impact; legal determination; other—specify).

(6) Estimated incremental or marginal cost.

(7) Status of reimbursement for costs:

(a) Requesting agency agreed to reimburse.

(b) Requesting agency requested waiver for reimbursement.

(c) Waiver request approval or denial recommendation (specify reasons for recommendations).

(8) Additional remarks.

10. Reporting Requirements. A quarterly report (RCS: DD-FM&P(Q)1595) of all requests for assistance (approved, denied, or pending) must be submitted by commands (MAJCOMs and SOAs) to HQ USAF/XOORC; Wash DC 20330. The report must show action taken (approval, denial, pending) and other information. The quarterly report must also reflect support provided on a recurring or continuing basis. Include support provided on under memoranda of agreement between supporting US Air Force organizations and supported civil law enforcement agencies. For example, collocated operating agreements between selected US Air Force operational units and the US Customs Service Air Operations Division under a host-tenant agreement. (The format for this quarterly report is shown at attachment 4.) The report is due by the 15th of the month following the end of the quarter.

Section C—Using Collected Information

11. Support Concept. Air Force personnel are encouraged to provide information obtained in the normal course of their duties to civilian law enforcement officials with jurisdiction when there is reason to believe federal, state, or local laws have been violated.

12. Incidental Support. Information can be obtained and provided incidental to a valid Air Force

training or operational mission. Air Force personnel are authorized to monitor and communicate the movement of air or sea traffic, provided Air Force mission requirements are met. Planning and execution of compatible military training and operations may consider the needs of civilian law enforcement officials for information when the collection of information is incidental to training or operations performed for a military purpose. For example, Airborne Warning and Control Systems (AWACS) sorties may be specifically scheduled to operate at times and in areas of interest to civilian law enforcement officials so long as compatible fighter resources are also scheduled which meet AWACS training requirements. The route, altitude, and duration of flight may be altered to gather information to assist law enforcement officials only if such alterations are consistent with operational mission requirements for the operational mission. This decision may be made at the lowest level of command consistent with MAJCOM or SOA policy. This does not permit planning or creating operational or training missions for the primary purpose of aiding civilian law enforcement officials, unless such dedicated support is specifically approved by the ADS(MI&L). Such requests for dedicated support are handled as requests for using Air Force personnel to assist civil law enforcement officials, and must be sent through channels as provided in section B.

13. El Paso Intelligence Center. After coordinating with the Air Force Office of Special Investigations (AFOSI) district, MAJCOM Judge Advocate or Security Police offices, information concerning illegal drugs that is provided to civilian law enforcement officials may be sent to the El Paso Intelligence Center, 2211 E. Missouri, Suite 200, El Paso TX 79903. Information sent to the El Paso Center must be included in the RCS: DD-FM&P(Q)1595 report.

14. Support Limitations. Nothing in this regulation modifies Air Force policies and procedures contained in:

a. AFR 12-35, Air Force Privacy Act Program.

b. AFR 124-13, Acquisition of Information Concerning Persons and Organizations not Affiliated With the Department of Defense.

c. AFR 200-1, Air Force Intelligence Mission and Responsibilities and Functions.

d. AFR 200-19, Conduct of Intelligence Activities.

Section D—Using Military Equipment and Facilities.

15. **Support Facilities.** Air Force units may provide facilities to civilian law enforcement officials as under AFR 87-3.

16. **Support Equipment.** Air Force units may provide equipment to civilian law enforcement officials as explained in AFM 67-1, volume I, part one, chapter 10, section N. (Excess property is disposed of through normal disposal channels.) Requests for arms, ammunition, tactical-automotive equipment, vessels, and aircraft require ASD(MI&L) approval. Requests for such items must be sent through channels for approval as provided in section B.

Section E—Participation of Air Force Personnel

17. **General Information.** Using Air Force personnel to provide assistance to civilian law enforcement officials is only authorized when approved by SAF/MI or higher authority. Requests for such assistance must be sent through command channels as provided in section B.

18. **Incidental Support.** As an exception to 17 above, commanders at all levels can approve using Air Force personnel to monitor and communicate the movement of air and sea traffic incidental to a valid Air Force mission. Such incidental assistance does not constitute using Air Force personnel for civilian law enforcement purposes.

19. **Exceptions Based on Status.** Legal restrictions on using Air Force personnel to provide assistance to civil law enforcement officials do not apply to the following personnel:

- a. Members of a Reserve component when not on active duty or active duty for training.
- b. Members of the Air National Guard when not in federal service.
- c. Members of the active Air Force when off duty and in a private capacity. (A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction, control, or suggestion of DOD authorities.)

20. **Assistance Permitted.** The following are examples of assistance that may be provided by Air Force personnel when approved by SAF/MI or higher authority:

a. **Training Assistance.** They may train civilian law enforcement officials to operate and maintain equipment provided as explained in paragraph 16.

b. **Expert Advice.** They may provide expert advice to civilian law enforcement officials. For example, Air Force members permanently assigned to the National Narcotics Border Interdiction System regional centers providing advice on Air Force resource capabilities and support request procedures (attachment 5).

c. **Maintain and Operate Equipment.** They may maintain equipment provided as explained in paragraph 16 above when requested by the head of a federal agency empowered to enforce federal drug, customs, or immigration laws. This equipment may not be operated by Air Force personnel, except when the equipment is used to monitor and communicate the movement of air and sea traffic.

d. **Emergency Assistance.** In emergencies declared jointly by the Secretary of Defense and Attorney General to enforce the drug, customs, and immigration laws, they may be used outside the United States to operate equipment used as a base of operations and to transport federal law enforcement officials.

21. **Military Working Dog Teams (MWDT).** MWDT are a valuable resource, but are limited in their use against drugs. By law, the military is restricted from participating in a search and seizure operation unless it would directly affect public safety. Therefore, dog teams are allowed to participate in bomb searches when public safety is endangered, but not allowed to search for drugs. MWDT may support civil law enforcement in bomb detection on a non-interference basis.

Section F—Guidance and Determining Reimbursements

22. **General Reimbursement Information.** Guidance herein specifies funding requirements and reporting procedures for use of resources, in cooperation with civilian law enforcement officials; this guidance is also used for determining and billing the reimbursable portion of this support.

23. **Reimbursement Policy.** In general, reimbursement is required when equipment or services are provided to agencies outside DOD. Reimbursement data will be accumulated and reported under financial reporting requirements.

a. **Primary authority for reimbursement is the Economy Act (31 U.S.C. 1535).** Specific guidance on reimbursement for the loan of equipment or supplies is provided in AFM 172-1, Vol 1 and AFR 177-101.

b. Reimbursement for telecommunications services is under AFR 700-3.

c. Time permitting, nonfederal civilian law enforcement officials provide the supporting installation with a fund advance based on the estimated cost of equipment and services.

24. Documentation Procedures. As part of normal administrative control procedures, a copy of the civilian law enforcement agency request (or a statement of the requested support) and the official approval should be retained by the organization providing the assistance. Dates and locations of the support and the Air Force resources employed are included.

25. Accounting System:

a. The system used to account for the cost of support to civilian law enforcement agencies need not be different from the system which management officials have deemed adequate and sufficient for normal administration and control of resources.

b. When the accounting system used by management has the capability to accumulate and distribute the indirect costs incurred providing the support (including the indirect costs for the overall management of the activity), that system should be used to accumulate the indirect costs.

(1) The existing accounting system should be used when it can be modified efficiently to provide a systematic and rational indirect costing process. This system then would be beneficial in the day-to-day operations of the activity.

(2) If management has no other recurring or significant use for an accounting system which separately can identify direct and indirect costs, a memorandum costing or cost-finding system for activities providing support to civilian law enforcement agencies is established by the Air Force Accounting and Finance Center.

c. Emergency Special Project (ESP) Code BA should be used to capture and report total costs (including military and civilian personnel costs (relating to US Air Force assistance provided to civilian law enforcement agencies (that is, Drug En-

forcement Administration, Customs, Coast Guard, Justice Department, state and local law enforcement agencies, etc.). Record all costs for civilian law enforcement operations and all civilian law enforcement support, such as providing expert advice, training, equipment, or facilities for drug interdiction, helicopter and aircraft surveillance of potentially unlawful activities, bomb detection dog teams, etc.

d. The incremental costs reported to the RCS: DD-FM&P(Q)1595 report must also be recorded to this ESP code. ESP Code "BA" total costs will be more inclusive than RCS: DD-FM&P(Q)1595 incremental costs.

26. Reimbursement Costs:

a. Incremental costs of support provided to any non-DOD agency by an Air Force industrial fund activity is reimbursed. Accordingly, normal industrial fund accounting procedures apply.

b. When permissible, automatic reimbursable accounting procedures are used to record a request for reimbursable support. Subsequent billing is accomplished on at least a quarterly basis of support provided by an Air Force element is over an extended period. Moreover, payment is required within 30 calendar days of the date of the bill. Payment may not be withheld over disagreement of cost for a specific item contained in the billing document.

27. Reimbursement Waivers:

a. Requests for waivers of reimbursement for which denial is recommended must be submitted by the requested agency as provided in section B. The ASD(MI&L) is the approval authority to grant or deny waiver of reimbursement.

b. A request for waiver may be granted when reimbursement is not otherwise required by law and it is determined not to have an adverse impact on military preparedness.

c. When evaluating requests for waiver of reimbursement, approval authorities consider the budgetary resources available to civilian law enforcement agencies and past practices with respect to similar types of assistance.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

LARRY D. WELCH, General, USAF
Chief of Staff

NORMAND G. LEZY, Colonel, USAF
Director of Administration

SUMMARY OF CHANGES

This revision includes guidance on the use of Military Working Dog Teams (MWDT) (para 21).



Department of Defense DIRECTIVE

January 15, 1986
NUMBER 5525.5

SUBJECT: DoD Cooperation with Civilian Law Enforcement Officials ASD(FM&P)

References: (a) through (11), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update uniform DoD policies and procedures to be followed with respect to support provided to Federal, State, and local civilian law enforcement efforts; and assigns responsibilities.

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as DoD Components). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. DoD policy on assistance to law enforcement officials in foreign governments is not governed by this Directive except as specified by other DoD issuances.

C. DEFINITIONS

1. Civilian Agency. An agency of one of the following jurisdictions:
 - a. The United States (other than the Department of Defense, but including the U.S. Coast Guard). This includes U.S. agencies in international areas dealing with U.S. flag vessels or aircraft in violation of U.S. law.
 - b. A State (or political subdivision of it) of the United States.
 - c. Commonwealth, Territory, or Possession (or political subdivision of it) of the United States.
2. Civilian Law Enforcement Official. An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of that agency.
3. DoD Intelligence Component. An organization listed in subsection C.4. of DoD Directive 5240.1 (reference (b)).

D. POLICY

It is DoD policy to cooperate with civilian law enforcement officials to the extent practical. The implementation of this policy shall be consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law, as developed in enclosures 2 through 7.

E. RESPONSIBILITIES**1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:**

a. Coordinate with civilian law enforcement agencies on long range policies to further DoD cooperation with civilian law enforcement officials.

b. Provide information to civilian agencies and The National Narcotics Border Interdiction System (NNBIS) to facilitate access to DoD resources.

c. Coordinate with the Department of Justice, the Department of Transportation (U.S. Coast Guard), and the Department of the Treasury (U.S. Customs Service) and represent the Department of Defense on interagency organizations regarding matters involving the interdiction of the flow of illegal drugs into the United States.

d. Develop guidance and, as required, take other actions as specified in enclosures 2 through 7, taking into account the requirements of DoD intelligence components and the interests of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) and the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)).

e. Inform the ASD(RA) of all requests for and taskings concerning National Guard and Reserve personnel and resources in support of civilian law enforcement.

f. Modify the sample report formats at enclosures 6 and 7.

2. The Inspector General of the Department of Defense (IG, DoD) shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated under DoD Directive 5106.1 (reference (c)), subject to coordination with the General Counsel.

3. The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) shall:

a. Assist the ASD(FM&P) in the development of guidance for use by approving authorities in evaluating the impact on military preparedness of any request for assistance from units of the National Guard and Reserve.

b. At the request of the Secretary of Defense or the ASD(FM&P), determine the impact on military preparedness of any request for military assistance from units of the National Guard and Reserve.

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4. The Secretaries of the Military Departments and the Directors of the Defense Agencies, as appropriate, shall:

- a. Disseminate the guidance issued by the ASD(FM&P) under paragraph E.1.d., above.
- b. Review training and operational programs to determine how and where assistance can best be provided civilian law enforcement officials consistent with the policy in section D., above. This review should identify those programs under which reimbursement would not be required under enclosure 5.
- c. Issue implementing documents incorporating the guidelines and procedures of this Directive, including the following:
 - (1) Procedures for prompt transfer of relevant information to law enforcement agencies.
 - (2) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, and local civilian law enforcement officials.
 - (3) Guidelines for evaluating requests for assistance in terms of impact on national security and military preparedness.
- d. Inform the Joint Chiefs of Staff (JCS), through ASD(FM&P) of all requests for and taskings in support of civilian law enforcement that involve the resources of a Unified or Specified Command, which, if provided, could have significant impact on military preparedness or national security.

5. The Director, National Security Agency/Chief, Central Security Service (DIRNSA/CHCSS) shall establish appropriate guidance for the National Security Agency/Central Security Service (NSA/CSS).

6. The Joint Chiefs of Staff shall:

- a. Assist the ASD(FM&P) in the development of guidance for use by approving authorities in evaluating the impact of requests for assistance on national security and military preparedness.
- b. Provide advice on the impact on national security and military preparedness of any request for military assistance at the request of the Secretary of Defense, the ASD(FM&P), the Secretaries of the Military Departments, the Directors of Defense Agencies, or the Commanders of the Unified and Specified Commands.

F. INFORMATION REQUIREMENTS

A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the Secretaries of the Military Departments and the Directors of Defense Agencies to the ASD(FM&P), the General Counsel, the ASD(HA), and the ASD(RA), not later than 30 days after the end of each

quarter. The report will show action taken (approval, denial, or pending) and other appropriate information. This information requirement has been assigned Report Control Symbol DD-FM&P(Q)1595. Actions involving the use of classified information or techniques may be exempted from such report with the concurrence of the ASD(FM&P) if it is impractical to prepare an unclassified summary. The sample format at enclosure 7 will be used to record all aviation assistance.

G. RELEASE OF INFORMATION

1. Release of information to the public concerning law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. The Military Departments and the Directors of the Defense Agencies may release such information, however, when approved under the procedures established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned. To the extent possible, the affected civilian law enforcement agencies shall be consulted before releasing such information.

2. When assistance is provided under this Directive, such assistance may be conditioned upon control by the Secretaries of the Military Departments and Directors of the Defense Agencies before information is released to the public.

H. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

William H. Taft, IV
William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 7

1. References
2. Use of Information Collected During Military Operations
3. Use of Military Equipment and Facilities
4. Restrictions on Participation of DoD Personnel
in Civilian Law Enforcement Activities
5. Funding
6. Sample Format for Preparing, "Report on Support to
Civilian Law Enforcement (RCS DD-FM&P(Q) 1595)"
7. Aviation Assistance to Law Enforcement Agencies (Sample
Format)

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REFERENCES

- (a) DoD Directive 5525.5, subject as above, March 22, 1982 (hereby canceled)
- (b) DoD Directive 5240.1, "Activities of DoD Intelligence Components that Affect U.S. Persons," December 3, 1982
- (c) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
- (d) Title 10, United States Code (10 U.S.C.), §§331-334, 337, 371-378, 2576, and 2667; and Chapter 47 (Uniform Code of Military Justice)
- (e) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980
- (f) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, authorized by reference (b)
- (g) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982
- (h) DoD 4515.13-R, "Air Transportation Eligibility," January 1980, authorized by DoD Directive 4515.13, June 26, 1979
- (i) Public Law, "The Economy Act," (31 U.S.C. §1535)
- (j) Public Law, "The Intergovernmental Cooperation Act of 1968," (40 U.S.C. §§531-535 and 42 U.S.C. §§4201, 4211-4214, 4221-4225, 4231-4233, 4241-4244)
- (k) Public Law, "Federal Property and Administrative Services Act of 1949," (40 U.S.C. §§471-476, 481, 483, 483c, 484-492, 512, 514, 531-535, 541-544, 751-759; 41 U.S.C. §§5, 251-255, 257-260; 44 U.S.C., Chapters 21, 25, 29, 31; and 50 U.S.C. Appendix 1622)
- (l) DoD Directive 3025.12, "Employment of Military Resources in the Event of Civil Disturbances," August 19, 1971
- (m) DoD Instruction 4160.23, "Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies," January 27, 1981
- (n) DoD Instruction 4160.24, "Disposal of Foreign Excess Personal Property for Substantial Benefits or the Discharge of Claims," July 24, 1981
- (o) DoD Directive 4165.6, "Real Property Acquisition, Management and Disposal," December 22, 1976
- (p) DoD Directive 4165.20, "Utilization and Retention of Real Property," January 31, 1985
- (q) DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-Impacted Communities," April 21, 1973
- (r) DoD Instruction 7230.7, "User Charges," January 29, 1985
- (s) DoD Instruction 7310.1, "Disposition of Proceeds from Sales of DoD Excess and Surplus Personal Property," November 15, 1984
- (t) DoD Instruction 7730.53, "Specialized or Technical Services Provided to State and Local Government," December 23, 1982
- (u) DoD Directive 5030.46, "Assistance to the District of Columbia Government in Combating Crime," March 26, 1971
- (v) Public Law, "Posse Comitatus Act," (18 U.S.C. §1385)
- (w) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes," January 22, 1985
- (x) Title 5, United States Code, Appendix 3, Section 8(g)
- (y) Title 16, United States Code, §§23, 78, 593, and 1861(a)
- (z) Title 18, United States Code, §§112, 351, 831, 1116, 1751, and 3056; "Presidential Protection Assistance Act of 1976," Public Law 94-524, 90 Stat. 2475

REFERENCES, continued

- (aa) Title 22, United States Code, §§408 and 461-462
- (bb) Title 25, United States Code, §180
- (cc) Title 42, United States Code, §§97, 1989, and 3789
- (dd) Title 43, United States Code, §1065
- (ee) Title 48, United States Code, §§1418, 1422, and 1591
- (ff) Title 50, United States Code, §220
- (gg) Public Law, "The Controlled Substances Act," (21 U.S.C. §801 et seq.)
- (hh) Public Law, "The Controlled Substances Import and Export Act,"
(21 U.S.C. §951 et seq.)
- (ii) Public Law, "The Immigration and Nationality Act," (8 U.S.C. §§1324-1328)
- (jj) Title 19, United States Code §1401 (The Tariff Act of 1930) and §1202
(Tariff Schedules of the United States)
- (kk) Title 21, United States Code §873(b)
- (ll) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983,
authorized by DoD Directive 7220.9

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USE OF INFORMATION COLLECTED DURING MILITARY OPERATIONS

A. ACQUISITION AND DISSEMINATION

Military Departments and Defense Agencies are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials. The Secretaries of the Military Departments and Directors of the Defense Agencies shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

1. The assistance provided under this enclosure shall be in accordance with 10 U.S.C. §371 (reference (d)) and other applicable laws.

2. The acquisition and dissemination of information under this enclosure shall be in accordance with DoD Directive 5200.27 (reference (e)), DoD Directive 5240.1 (reference (b)), and DoD 5240.1-R (reference (f)).

3. Military Departments and Defense Agencies shall establish procedures for "routine use" disclosures of such information in accordance with DoD Directive 5400.11 (reference (g)).

4. Under guidance established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned, the planning and execution of compatible military training and operations may take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training performed for a military purpose. In this regard, the needs of civilian law enforcement officials may be considered when scheduling routine training missions. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens. Local law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with DoD 4515.13-R (reference (h)).

5. Under procedures established by the Secretaries of Military Departments and the Directors of the Defense Agencies concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under this provision (reference (f)) may be provided to the El Paso Intelligence Center.

6. Nothing in this section modifies DoD policies or procedures concerning dissemination of information for foreign intelligence or counterintelligence purposes.

7. The Military Departments and Defense Agencies are encouraged to participate in Department of Justice Law Enforcement Coordinating Committees situated in each Federal Judicial District.

8. The assistance provided under this enclosure may not include or permit direct participation by a member of a Military Service in the interdiction of a vessel, aircraft, or a land vehicle, a search or seizure, arrest, or other similar activity unless participation in such activity by the member is otherwise authorized by law. See enclosure 4.

B. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if it could adversely affect national security or military preparedness.

C. FUNDING

To the extent that assistance under this enclosure requires Military Departments and Defense Agencies to incur costs beyond those that are incurred in the normal course of military operations, the funding provisions of enclosure 5 apply.

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5525.5 (Encl 3)

USE OF MILITARY EQUIPMENT AND FACILITIES

A. EQUIPMENT AND FACILITIES

Military Departments and Defense Agencies may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with this enclosure.

1. The ASD(FM&P) shall issue guidance to ensure that the assistance provided under this enclosure is in accordance with applicable provisions of 10 U.S.C. §§372, 2576, and 2667 (reference (d)); the Economy Act (reference (i)); the Intergovernmental Cooperation Act of 1968 (reference (j)); the Federal Property and Administrative Services Act of 1949 (reference (k)); and other applicable laws.

2. The guidance in subsection A.1., above, shall ensure that the following Directives are complied with: DoD Directive 3025.12 (reference (l)); DoD Instruction 4160.23 (reference (m)); DoD Instruction 4160.24 (reference (n)); DoD Directive 4165.6 (reference (o)); DoD Directive 4165.20 (reference (p)); DoD Directive 5410.12 (reference (q)); DoD Instruction 7230.7 (reference (r)); DoD Instruction 7310.1 (reference (s)); DoD Instruction 7730.53 (reference (t)); and other guidance that may be issued by the ASD(FM&P) and the Assistant Secretary of Defense (Comptroller) (ASD(C)).

3. The assistance provided by DoD Intelligence Components is subject to DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

B. LIMITATIONS ON THE USE OF PERSONNEL

1. A request for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under section A., above, shall be considered under the guidance in subsection A.6. (enclosure 4).

2. Personnel in DoD intelligence components also are subject to the limitations in DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

C. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if such assistance could adversely affect national security or military preparedness. The implementing documents issued by the Secretaries of the Military Departments and the Directors of the Defense Agencies shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military preparedness.

D. APPROVAL AUTHORITY

Requests by civilian law enforcement officials for DoD assistance in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this section.

1. Approval authority for military assistance if there is a civil disturbance or related matters requiring immediate action is governed by DoD Directive 3025.12 (reference (l)).

2. Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46 (reference (u)).

3. The following governs approval for assistance to civilian law enforcement officials in other circumstances:

a. Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded for consideration under section E. of enclosure 4.

b. Requests for DoD intelligence components to provide assistance shall be forwarded for consideration under DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

c. Loans under the Economy Act (reference (i)) are limited to agencies of the Federal Government. Leases under 10 U.S.C. 2667 (reference (d)) may be made to entities outside the Federal Government.

(1) Requests for arms, ammunition, combat vehicles, vessels, and aircraft are subject to approval by the Secretaries of the Military Departments and the Directors of Defense Agencies. A notice of approval or denial shall be reported to the ASD(FM&P) within 48 hours after such action.

(2) Requests for loan or lease or other use of equipment or facilities are subject to approval by the Secretaries of the Military Departments and the Directors of the Defense Agencies, unless approval by a higher official is required by statute or DoD Directive applicable to the particular disposition. This authority may be delegated. The Secretaries of the Military Departments and the Directors of the Defense Agencies shall issue rules for taking action on requests for loan, lease, or other use of equipment or facilities that are not governed by paragraphs D.3.a. through D.3.c., above, subject to the following:

(a) Such rules shall ensure compliance with applicable statutes and DoD Directives requiring specific levels of approval with respect to particular dispositions.

(b) The ASD(FM&P) shall be notified within 48 hours after action is taken approving or denying a request for a loan, lease, or other use of equipment or facilities for more than 60 days.

d. Requests for the use of equipment or facilities outside the Continental United States (CONUS) other than arms, ammunition, combat vehicles, vessels, and aircraft shall be approved in accordance with procedures established by the applicable Military Department or Defense Agency.

e. Requests from Federal agencies for purchase of equipment (permanent retention) that are accompanied by appropriate funding documents may be submitted directly to the Military Departments or Defense Agencies. Requests for transferring equipment to non-Federal agencies must be processed under DoD Instruction 4160.23 (reference (m)) or DoD Directive 4165.20 (reference (p)).

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f. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(FM&P). Requests will be forwarded and processed according to the urgency of the situation.

E. FUNDING

Funding requirements for assistance under this enclosure shall be established under the guidance in enclosure 5.

ATTACHMENT 2

AFR 124-12, DOD DIRECTIVE 5525.7, MOU DOJ/DOD

INVESTIGATING CRIMINAL MATTERS WITH THE DEPARTMENT OF JUSTICE

Filed 5 May 85

DEPARTMENT OF THE AIR FORCE
Headquarters US Air Force
Washington DC 20330-5000

AF REGULATION 124-12

13 September 1985

Special Investigations

INVESTIGATING CRIMINAL MATTERS WITH THE DEPARTMENT OF JUSTICE

This regulation states policy and procedures and assigns responsibilities for investigating certain crimes by the Air Force of Special Investigations (AFOSI) and the Department of Justice (DOJ) investigative agencies. It implements the investigative policies and procedures in Department of Defense (DOD) Directive 5525.7, 22 January 1985, and the August 1984 Memorandum of Understanding (MOU) between the Department of Justice and the Department of Defense, relating to the investigation and prosecution of certain crimes. This regulation applies to AFOSI and to commanders and officials who are involved in requesting investigations or taking action as a result of them. It also applies to the Air Force Reserve, and to the Air National Guard. Prosecutive policies set forth in DOD Directive 5525.7 and the MOU are implemented in AFR 111-1.

1. **General Information.** In August 1984, the Secretary of Defense and the Attorney General signed a memorandum of understanding (MOU) establishing policy for investigating and prosecuting criminal matters involving DOD programs, operations, installations, and personnel. DOD Directive 5525.7 implements the MOU, and provides supplemental guidance for all DOD components.

2. **Definition of DOD Criminal Investigative Organization.** This term refers to AFOSI when taken in the context of Air Force criminal investigative matters.

3. **Air Force Policy.** The Air Force supports the DOD policy of maintaining effective working relationships with the DOJ in investigating and prosecuting crimes involving DOD programs, operations, or personnel. It is Air Force policy to comply fully with the MOU and DOD Directive 5525.7 (attachment 1).

4. **Responsibilities Assigned:**

a. The commander, AFOSI, ensures Air Force compliance with the investigative policies of DOD Directive 5525.7 and the MOU. Responsibilities include:

(1) Establishing procedures and guidance for all AFOSI staff and field elements regarding their responsibilities to:

(a) Make and receive all Air Force-related referrals, notices, reports, requests, and general transfers of

information required by the MOU.

(b) Advise commanders, program managers, and other authorities of action they take according to (a) above.

(c) Advise HQ AFOSI of all significant allegations requiring a referral or other exchange of information under the MOU.

(d) Approve joint criminal investigations and operations with DOJ investigative agencies in matters relating to Air Force programs, operations, or personnel.

(2) Coordinating requests for Air Force investigative assistance to DOJ investigative agencies in matters not relating to the DOD. Approval for such assistance is according to AFR 55-35.

(3) Ensuring that prompt notice is given to HQ USAF/IG and JA, and SAF/GC, when referrals to the FBI concern significant allegations of bribery and conflict of interest involving Air Force military and civilian personnel. (NOTE: The term "significant" is as defined in DOD Directive 5525.7, Enclosure 1, paragraph C1a.)

b. Air Force commanders must promptly advise their servicing AFOSI unit (see AFR 124-6) of any matter that falls within AFOSI's investigative responsibility as established by AFR 23-18. This includes matters which may ultimately be investigated or prosecuted by a DOJ agency.

✓ Supersedes 124-12, 30 September 1955. (See signature page for summary of changes.)

No. of Printed Pages: 17

OPR: HQ AFOSI/XPP (Mr. Donald W. Kennedy)

Approved by: HQ AFOSI/XP (Col Richard L. Binford)

Writer-Editor: Barbara Carver

Distribution: F

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

CHARLES A. GABRIEL, General, USAF
Chief of Staff

JAMES H. DELANEY, Colonel, USAF
Director of Administration

1 Attachment
DOD Directive 5525.7

SUMMARY OF CHANGES This revision implements a new memorandum of understanding between the Departments of Justice and Defense (para 3) which replaces the MOU dated 19 July 1955 (para 1).



Department of Defense DIRECTIVE

January 22, 1985
NUMBER 5525.7

GC/IG, DoD

SUBJECT: Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes

- References:**
- (a) DoD Directive 1355.1, "Relationships with the Department of Justice on Grants of Immunity and the Investigation and Prosecution of Certain Crimes," July 21, 1981 (hereby canceled)
 - (b) Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes, August 1984
 - (c) Title 18, United States Code
 - (d) Title 10, United States Code, Sections 801-940 (Articles 1-140), "Uniform Code of Military Justice (UCMJ)"
 - (e) Manual for Courts-Martial, United States, 1984 (R.C.M. 704)

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a), updates policy and procedures, assigns responsibilities, and implements the 1984 Memorandum of Understanding (MOU) between the Department of Justice (DoJ) and the Department of Defense (DoD).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Office of Inspector General, DoD, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and Unified and Specified Commands (hereafter referred to collectively as "DoD Components"). The term "DoD criminal investigative organizations," as used herein, refers collectively to the United States Army Criminal Investigation Command (USACIDC); Naval Investigative Service (NIS); U.S. Air Force Office of Special Investigations (AFOSI); and Defense Criminal Investigative Service (DCIS), Office of the Inspector General, DoD.

C. POLICY

It is DoD policy to maintain effective working relationships with the DoJ in the investigation and prosecution of crimes involving the programs, operations, or personnel of the Department of Defense.

D. PROCEDURES

With respect to inquiries for which the DoJ has assumed investigative responsibility based on the MOU, DoD investigative agencies should seek to participate jointly with DoJ investigative agencies whenever the inquiries relate to the programs, operations, or personnel of the Department of Defense. This applies to cases referred to the Federal Bureau of Investigation (FBI) under paragraph C.1.a. of the attached MOU (see enclosure 1) as well as to those cases for which a DoJ investigative agency is assigned primary investigative responsibility by a DoJ prosecutor. DoD Components shall comply with the terms of the MOU and DoD Supplemental Guidance (see enclosure 1).

E. RESPONSIBILITIES

1. The Inspector General, Department of Defense (IG, DoD), shall:

- a. Establish procedures to implement the investigative policies set forth in this Directive.
- b. Monitor compliance by DoD criminal investigative organizations to the terms of the MOU.
- c. Provide specific guidance regarding investigative matters, as appropriate.

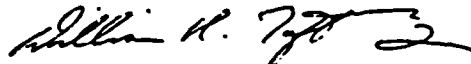
2. The General Counsel, Department of Defense, shall:

- a. Establish procedures to implement the prosecutive policies set forth in this Directive.
- b. Monitor compliance by the DoD Components regarding the prosecutive aspects of the MOU.
- c. Provide specific guidance, as appropriate.
- d. Modify the DoD Supplemental Guidance at enclosure 1, with the concurrence of the IG, DoD, after requesting comments from affected DoD Components.

3. The Secretaries of the Military Departments shall establish procedures to implement the policies set forth in this Directive.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Military Departments shall forward two copies of implementing documents to the Inspector General, Department of Defense, within 90 days. Other DoD Components shall disseminate this Directive to appropriate personnel.



William H. Taft, IV
Deputy Secretary of Defense

Enclosure - 1

Memorandum of Understanding Between the Departments of Justice
And Defense Relating to the Investigation and Prosecution of
Certain Crimes

This enclosure contains the verbatim text of the 1984 Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes (reference (b)). Matter that is identified as "DoD Supplemental Guidance" has been added by the Department of Defense. DoD Components shall comply with the MOU and the DoD Supplemental Guidance.

MEMORANDUM OF UNDERSTANDING BETWEEN THE
DEPARTMENTS OF JUSTICE AND DEFENSE
RELATING TO THE INVESTIGATION AND
PROSECUTION OF CERTAIN CRIMES

A. PURPOSE, SCOPE AND AUTHORITY

This Memorandum of Understanding (MOU) establishes policy for the Department of Justice and the Department of Defense with regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. This memorandum is not intended to confer any rights, benefits, privileges or form of due process procedure upon individuals, associations, corporations or other persons or entities.

This Memorandum applies to all components and personnel of the Department of Justice and the Department of Defense. The statutory bases for the Department of Defense and the Department of Justice investigation and prosecution responsibilities include, but are not limited to:

1. Department of Justice: Titles 18, 21 and 28 of the United States Code; and
2. Department of Defense: The Uniform Code of Military Justice, Title 10, United States Code, Sections 801-940; the Inspector General Act of 1978, Title 5 United States Code, Appendix 3; and Title 5 United States Code, Section 301.

B. POLICY

The Department of Justice has primary responsibility for enforcement of federal laws in the United States District Courts. The Department of Defense has responsibility for the integrity of its programs, operations and installations and for the discipline of the Armed Forces. Prompt administrative actions and completion of investigations within the two (2) year statute of limitations under the Uniform Code of Military Justice require the Department of Defense to assume an important role in federal

criminal investigations. To encourage joint and coordinated investigative efforts, in appropriate cases where the Department of Justice assumes investigative responsibility for a matter relating to the Department of Defense, it should share information and conduct the inquiry jointly with the interested Department of Defense investigative agency.

It is neither feasible nor desirable to establish inflexible rules regarding the responsibilities of the Department of Defense and the Department of Justice as to each matter over which they may have concurrent interest. Informal arrangements and agreements within the spirit of this MOU are permissible with respect to specific crimes or investigations.

C. INVESTIGATIVE AND PROSECUTIVE JURISDICTION

1. CRIMES ARISING FROM THE DEPARTMENT OF DEFENSE OPERATIONS

a. Corruption Involving the Department of Defense Personnel

The Department of Defense investigative agencies will refer to the FBI on receipt all significant allegations of bribery and conflict of interest involving military or civilian personnel of the Department of Defense. In all corruption matters the subject of a referral to the FBI, the Department of Defense shall obtain the concurrence of the Department of Justice prosecutor or the FBI before initiating any independent investigation preliminary to any action under the Uniform Code of Military Justice. If the Department of Defense is not satisfied with the initial determination, the matter will be reviewed by the Criminal Division of the Department of Justice.

The FBI will notify the referring agency promptly regarding whether they accept the referred matters for investigation. The FBI will attempt to make such decision in one (1) working day of receipt in such matters.

DoD Supplemental Guidance

A. Certain bribery and conflict of interest allegations (also referred to as "corruption" offenses in the MOU) are to be referred immediately to the FBI.

B. For the purposes of this section, bribery and conflict of interest allegations are those which would, if proven, violate 18 U.S.C., Sections 201, 203, 205, 208, 209, or 219 (reference (c)).

C. Under paragraph C.1.a., DoD criminal investigative organizations shall refer to the FBI those "significant" allegations of bribery and conflict of interest that implicate directly military or civilian personnel of the Department of Defense, including allegations of bribery or conflict of interest that arise during the course of an ongoing investigation.

1. All bribery and conflict of interest allegations against present, retired, or former General or Flag officers and civilians in grade GS-16 and above, the Senior Executive Service and the Executive Level will be considered "significant" for purposes of referral to the FBI.

2. In cases not covered by subsection C.1., above, the determination of whether the matter is "significant" for purposes of referral to the FBI should be made in light of the following factors: sensitivity of the DoD program, involved, amount of money in the alleged bribe, number of DoD personnel implicated, impact on the affected DoD program, and with respect to military personnel, whether the matter normally would be handled under the Uniform Code of Military Justice (reference (d)). Bribery and conflicts of interest allegations warranting consideration of Federal prosecution, which were not referred to the FBI based on the application of these guidelines and not otherwise disposed of under reference (d), will be developed and brought to the attention of the Department of Justice through the "conference" mechanism described in paragraph C.1.b. of the MOU (reference (b)).

D. Bribery and conflict of interest allegations when military or DoD civilian personnel are not subjects of the investigation are not covered by the referral requirement of paragraph C.1.a of reference (b). Matters in which the suspects are solely DoD contractors and their subcontractors, such as commercial bribery between a DoD subcontractor and a DoD prime contractor, do not require referral upon receipt to the FBI. The "conference" procedure described in paragraph C.1.b. of reference (b) shall be used in these types of cases.

E. Bribery and conflict of interest allegations that arise from events occurring outside the United States, its territories, and possessions, and requiring investigation outside the United States, its territories, and possessions need not be referred to the FBI.

b. Frauds Against the Department of Defense and
Theft and Embezzlement of Government Property

The Department of Justice and the Department of Defense have investigative responsibility for frauds against the Department of Defense and theft and embezzlement of Government property from the Department of Defense. The Department of Defense will investigate frauds against the Department of Defense and theft of government property from the Department of Defense. Whenever a Department of Defense investigative agency identifies a matter which, if developed by investigation, would warrant federal prosecution, it will confer with the United States Attorney or the Criminal Division, the Department of Justice, and the FBI field office. At the time of this initial conference, criminal investigative responsibility will be determined by the Department of Justice in consultation with the Department of Defense.

DoD Supplemental Guidance

A. Unlike paragraph C.1.a. of the MOU (reference (b)), paragraph C.1.b. does not have an automatic referral requirement. Under paragraph C.1.b., DoD criminal investigative organizations shall confer with the appropriate federal prosecutor and the FBI on matters which, if developed by investigation, would warrant Federal prosecution. This "conference" serves to define the respective roles of DoD criminal investigative organizations and the FBI on a case-by-case basis. Generally, when a conference is warranted, the DoD criminal investigative organization shall arrange to meet with the prosecutor and shall provide notice to the FBI that such meeting is being held. Separate conferences with both the prosecutor and the FBI normally are not necessary.

B. When investigations are brought to the attention of the Defense Procurement Fraud Unit (DPFU), such contact will satisfy the "conference" requirements of paragraph C.1.b. (reference (b)) as to both the prosecutor and the FBI.

C. Mere receipt by DoD criminal investigative organizations of raw allegations of fraud or theft does not require conferences with the DoJ and the FBI. Sufficient evidence should be developed before the conference to allow the prosecutor to make an informed judgment as to the merits of a case dependent upon further investigation. However, DoD criminal investigative organizations should avoid delay in scheduling such conferences, particularly in complex fraud cases, because an early judgment by a prosecutor can

be of assistance in focusing the investigation on those matters that most likely will result in criminal prosecution.

2. CRIMES COMMITTED ON MILITARY INSTALLATIONS

a. Subject(s) can be Tried by Court-Martial or are Unknown

Crimes (other than those covered by paragraph C.1.) committed on a military installation will be investigated by the Department of Defense investigative agency concerned and, when committed by a person subject to the Uniform Code of Military Justice, prosecuted by the Military Department concerned. The Department of Defense will provide immediate notice to the Department of Justice of significant cases in which an individual subject/victim is other than a military member or dependent thereof.

b. One or More Subjects cannot be Tried by Court-Martial

When a crime (other than those covered by paragraph C.1.) has occurred on a military installation and there is reasonable basis to believe that it has been committed by a person or persons, some or all of whom are not subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will provide immediate notice of the matter to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class of crime.

DoD Supplemental Guidance

A. Subsection C.2. of the MOU (reference (b)) addresses crimes committed on a military installation other than those listed in paragraphs C.1.a. (bribery and conflict of interest) and C.1.b. (fraud, theft, and embezzlement against the Government).

B. Unlike paragraph C.1.a. of reference (b), which requires "referral" to the FBI of certain cases, and paragraph C.1.b., which requires "conferences" with respect to certain cases, subsection C.2. requires only that "notice" be given to DoJ of certain cases. Relief from the reporting requirement of subsection C.2. may be granted by the local U.S. attorney as to types or classes of cases.

C. For purposes of paragraph C.2.a. (when the subjects can be tried by court-martial or are unknown), an allegation is "significant" for purposes of required notice to the DoJ only if the offense falls within the prosecutorial guidelines of the local U.S. attorney. Notice should be given in other cases when the DoD Component believes that Federal prosecution is warranted or otherwise determines that the case may attract significant public attention.

3. CRIMES COMMITTED OUTSIDE MILITARY INSTALLATIONS BY PERSONS WHO CAN BE TRIED BY COURT-MARTIAL

a. Offense is Normally Tried by Court-Martial

Crimes (other than those covered by paragraph C.1.) committed outside a military installation by persons subject to the Uniform Code of Military Justice which, normally, are tried by court-martial will be investigated and prosecuted by the Department of Defense. The Department of Defense will provide immediate notice of significant cases to the appropriate Department of Justice investigative agency. The Department of Defense will provide immediate notice in all cases where one or more subjects is not under military jurisdiction unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class of crime.

DoD Supplemental Guidance

For purposes of this paragraph, an allegation is "significant" for purposes of required notice to the DoJ only if the offense falls within prosecutorial guidelines of the local U.S. attorney. Notice should be given in other cases when the DoD Component believes that Federal prosecution is warranted, or otherwise determines that the case may attract significant public attention.

b. Crimes Related to Scheduled Military Activities

Crimes related to scheduled Military activities outside of a military installation, such as organized maneuvers in which persons subject to the Uniform Code of Military Justice are suspects, shall be treated as if committed on a military installation for purposes of this Memorandum. The FBI or other Department of Justice investigative agency may assume jurisdiction with the concurrence of the United States Attorney or the Criminal Division, Department of Justice.

c. Offense is not Normally Tried by Court-Martial

When there are reasonable grounds to believe that a Federal crime (other than those covered by paragraph C.1.) normally not tried by court-martial, has been committed outside a military installation by a person subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will immediately refer the case to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class of crime.

D. REFERRALS AND INVESTIGATIVE ASSISTANCE

1. REFERRALS

Referrals, notices, reports, requests and the general transfer of information under this Memorandum normally should be between the FBI or other Department of Justice investigative agency and the appropriate Department of Defense investigative agency at the field level.

If a Department of Justice investigative agency does not accept a referred matter and the referring Department of Defense investigative agency then, or subsequently, believes that evidence exists supporting prosecution before civilian courts, the Department of Defense agency may present the case to the United States Attorney or the Criminal Division, Department of Justice, for review.

2. INVESTIGATIVE ASSISTANCE

In cases where a Department of Defense or Department of Justice investigative agency has primary responsibility and it requires limited assistance to pursue outstanding leads, the investigative agency requiring assistance will promptly advise the appropriate investigative agency in the other Department and, to the extent authorized by law and regulations, the requested assistance should be provided without assuming responsibility for the investigation.

E. PROSECUTION OF CASES

1. With the concurrence of the Department of Defense, the Department of Justice will designate such Department of Defense attorneys as it deems desirable to be Special Assistant United States Attorneys for use where the effective prosecution of cases may be facilitated by the Department of Defense attorneys.

2. The Department of Justice will institute civil actions

expeditiously in United States District Courts whenever appropriate to recover monies lost as a result of crimes against the Department of Defense; the Department of Defense will provide appropriate assistance to facilitate such actions.

3. The Department of Justice prosecutors will solicit the views of the Department of Defense prior to initiating action against an individual subject to the Uniform Code of Military Justice.

4. The Department of Justice will solicit the views of the Department of Defense with regard to its Department of Defense-related cases and investigations in order to effectively coordinate the use of civil, criminal and administrative remedies.

DoD Supplemental Guidance

Prosecution of Cases and Grants of Immunity

A. The authority of court-martial convening authorities to refer cases to trial, approve pretrial agreements, and issue grants of immunity under the UCMJ (reference (d)) extends only to trials by court-martial. In order to ensure that such actions do not preclude appropriate action by Federal civilian authorities in cases likely to be prosecuted in the U.S. district courts, court-martial convening authorities shall ensure that appropriate consultation as required by this enclosure has taken place before trial by court-martial, approval of a pretrial agreement, or issuance of a grant of immunity in cases when such consultation is required.

B. Only a general court-martial convening authority may grant immunity under the UCMJ (reference (d)), and may do so only in accordance with R.C.M. 704 (reference (e)).

1. Under reference (d), there are two types of immunity in the military justice system:

a. A person may be granted transactional immunity from trial by court-martial for one or more offenses under reference (d).

b. A person may be granted testimonial immunity, which is immunity from the use of testimony, statements, and any information directly or indirectly derived from such testimony or statements by that person in a later court-martial.

2. Before a grant of immunity under reference (d), the general court-martial convening authority shall ensure that there has been appropriate consultation with the DoJ with respect to offenses in which consultation is required by this enclosure.

3. A proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the DoJ. The General Counsel shall obtain the views of other appropriate elements of the Department of Defense in furtherance of such consultation.

C. The authority of court-martial convening authorities extends only to grants of immunity from action under reference (d). Only the Attorney General or other authority designated under 18 U.S.C. §§6001-6005 (reference (c)) may authorize action to obtain a grant of immunity with respect to trials in the U.S. district courts.

F. MISCELLANEOUS MATTERS

1. THE DEPARTMENT OF DEFENSE ADMINISTRATIVE ACTIONS

Nothing in this Memorandum limits the Department of Defense investigations conducted in support of administrative actions to be taken by the Department of Defense. However, the Department of Defense investigative agencies will coordinate all such investigations with the appropriate Department of Justice prosecutive agency and obtain the concurrence of the Department of Justice prosecutor or the Department of Justice investigative agency prior to conducting any administrative investigation during the pendency of the criminal investigation or prosecution.

2. SPECIAL UNIFORM CODE OF MILITARY JUSTICE FACTORS

In situations where an individual subject to the Uniform Code of Military Justice is a suspect in any crime for which a Department of Justice investigative agency has assumed jurisdiction, if a Department of Defense investigative agency believes that the crime involves special factors relating to the administration and discipline of the Armed Forces that would justify its investigation, the Department of Defense investigative agency will advise the appropriate Department of Justice investigative agency or the Department of Justice

prosecuting authorities of these factors. Investigation of such a crime may be undertaken by the appropriate Department of Defense investigative agency with the concurrence of the Department of Justice.

3. ORGANIZED CRIME

The Department of Defense investigative agencies will provide to the FBI all information collected during the normal course of agency operations pertaining to the element generally known as "organized crime" including both traditional (La Cosa Nostra) and nontraditional organizations whether or not the matter is considered prosecutable. The FBI should be notified of any investigation involving any element of organized crime and may assume jurisdiction of the same.

4. DEPARTMENT OF JUSTICE NOTIFICATIONS TO DEPARTMENT OF DEFENSE INVESTIGATIVE AGENCIES

a. The Department of Justice investigative agencies will promptly notify the appropriate Department of Defense investigative agency of the initiation of the Department of Defense related investigations which are predicated on other than a Department of Defense referral except in those rare instances where notification might endanger agents or adversely affect the investigation. The Department of Justice investigative agencies will also notify the Department of Defense of all allegations of the Department of Defense related crime where investigation is not initiated by the Department of Justice.

b. Upon request, the Department of Justice investigative agencies will provide timely status reports on all investigations relating to the Department of Defense unless the circumstances indicate such reporting would be inappropriate.

c. The Department of Justice investigative agencies will promptly furnish investigative results at the conclusion of an investigation and advise as to the nature of judicial action, if any, taken or contemplated.

d. If judicial or administrative action is being considered by the Department of Defense, the Department of Justice will, upon written request, provide existing detailed investigative data and documents (less any federal grand jury material, disclosure of which would be prohibited by Rule 6(e), Federal Rules of Criminal Procedure), as well as agent testimony for use in judicial or administrative proceedings, consistent with Department of Justice and other federal regulations. The ultimate use of the information shall be subject to the concurrence of the federal prosecutor during the pendency of any

related investigation or prosecution.

5. TECHNICAL ASSISTANCE

a. The Department of Justice will provide to the Department of Defense all technical services normally available to federal investigative agencies.

b. The Department of Defense will provide assistance to the Department of Justice in matters not relating to the Department of Defense as permitted by law and implementing regulations.

6. JOINT INVESTIGATIONS

a. To the extent authorized by law, the Department of Justice investigative agencies and the Department of Defense investigative agencies may agree to enter into joint investigative endeavors, including undercover operations, in appropriate circumstances. However, all such investigations will be subject to Department of Justice guidelines.

b. The Department of Defense, in the conduct of any investigation that might lead to prosecution in Federal District Court, will conduct the investigation consistent with any Department of Justice guidelines. The Department of Justice shall provide copies of all relevant guidelines and their revisions.

DoD Supplemental Guidance

When DoD procedures concerning apprehension, search and seizure, interrogation, eyewitnesses, or identification differ from those of DoJ, DoD procedures will be used, unless the DoJ prosecutor has directed that DoJ procedures be used instead. DoD criminal investigators should bring to the attention of the DoJ prosecutor, as appropriate, situations when use of DoJ procedures might impede or preclude prosecution under the UCMJ (reference (d)).

7. APPREHENSION OF SUSPECTS

To the extent authorized by law, the Department of Justice and the Department of Defense will each promptly deliver or make available to the other suspects, accused individuals and witnesses where authority to investigate the crimes involved is lodged in the other Department. This MOU neither expands nor

limits the authority of either Department to perform apprehensions, searches, seizures, or custodial interrogations.

G. EXCEPTION

This Memorandum shall not affect the investigative authority now fixed by the 1979 "Agreement Governing the Conduct of the Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation" and the 1983 Memorandum of Understanding between the Department of Defense, the Department of Justice and the FBI concerning "Use of Federal Military Force in Domestic Terrorist Incidents."

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DEPARTMENT OF THE AIR FORCE
HQ Air Force Office of Special Investigations
Bolling AFB DC 20332-6001

AFOSI Regulation 124-66

14 November 1990

Special Investigations

TECHNOLOGY TRANSFER INVESTIGATIONS

This regulation establishes AFOSI responsibilities and procedures for conducting investigations into the illegal export or attempted export of items in which the Air Force has a direct interest. It provides specific guidance for district and detachment personnel who may become involved with technology transfer investigations where items of Air Force interests are concerned.

The information and instructions contained in this publication are for the information and guidance of AFOSI personnel. Dissemination out of AFOSI channels will not be made without prior approval of the Commander, Air Force Office of Special Investigations.

1. General. These cases are distinguished from purely criminal cases because they involve unauthorized foreign entity (powers, organizations, or persons) attempts to acquire Air Force proprietary interests that are sensitive (controlled or critical) technologies. Such operations and investigations will primarily support local law enforcement, e.g., U.S. Customs Service (USCS), FBI, or Commerce involving violations of the Export Administration Act, the Arms Export Control Act, or other export violations regarding Air Force related technologies such as found in the "Militarily Critical Technologies List" (MCTL). Pertinent extracts of these Acts as they may have impact upon DOD are in AFP 80-30, Marking Documents with Export-Control and Distribution-Limitation Statements.

2. Responsibilities. By law, violations of the export control laws fall within the jurisdiction of USCS, the Department of Commerce and, in some instances, the FBI. These cases, which are usually criminal in nature, have counterintelligence implications when they involve an illegal attempt by an unauthorized foreign entity for a sensitive (controlled or critical) technology.

3. Guidance. Identifying which technologies are "controlled" (requiring licensing for export) and "critical" (having characteristics with advanced technological capabilities, not including spare parts) is often difficult because even slight differences in specifications may be determining factors. There are a number of guidelines available such as the MCTL and the International Traffic in Arms Regulation (ITAR) which generally describe technological categories warranting export licensing and which are unique to the military.

a. A guide to identifying USAF export controlled technologies and data may be found in AFP 80-30. It states that technical data includes "production, engineering, logistics, and scientific and technical information, which may be in the form of formal written reports, blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment."

Supersedes AFOSIR 124-66, 23 December 1987 (See signature page for Summary of Changes.)

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OPR: IVOX (SA Clifford E. Newman)

Approved by: Colonel T. L. Sullivan, II

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b. Some Air Force related technologies are considered classified and may necessitate a different investigative approach within AFOSI. For cases where districts cannot readily determine whether a technology is militarily critical, HQ AFOSI/VOX will be notified immediately so that proper internal coordination among Air Force technology experts and within HQ AFOSI/IVO can be done.

c. AFOSI should provide support to the law enforcement agency with primary jurisdiction in technology transfer investigations which impact upon Air Force interests. This support will be documented as a Case Type 88 or 88 zero and include routine investigative procedures, e.g., identifying the subject, witnesses, and modus operandi.

4. Case Type 88. Use Case Type 88 for investigations into illegal technology transfer impacting on Air Force interests. These cases almost always involve an illegal attempt by an unauthorized entity (foreign or U.S.) for an AF related sensitive (controlled or critical) technology or system for the purpose of export. Initial information may be insufficient to confirm the participation of an unauthorized foreign entity, but other factors may suggest such involvement. For example, the amount of money, the proposed destinations, and the manner of financial backing (letters of credit, telex communications) may lend support to the reasonable belief of involvement by a foreign entity.

a. These cases have the potential to be "high interest items" since they involve sensitive or militarily critical technologies and systems. If the case is designated as such by HQ, HQ AFOSI/VOX may require periodic updates as operational or investigative events develop.

b. There are situations where allegations of illegal technology transfer are received, and a potential Air Force interest is not immediately seen. In this instance a Case Type 88 zero should be opened to test the allegation. Should a direct Air Force interest be found, a follow-up report will be sent and the zero changed to a Case Type 88. In instances where a direct Air Force interest is apparent from the beginning, initiate a Case Type 88.

c. When illegal technology transfer information is received, but it is clearly not Air Force owned or developed and there is no direct connection with a known foreign entity, but the technology or system is of military interest (MCTL, ITAR), a Case Type 88 zero will be written.

d. In cases involving investigative initiatives in support of other law enforcement agencies, a detailed operations plan may be required by HQ AFOSI/VOX. Such determinations will be made on a case-by-case basis. HQ AFOSI will conduct appropriate national level coordination. HQ AFOSI/IVO in coordination with HQ AFOSI/IV will determine, on a case-by-case basis, the relationship between 88 cases and other cases categories. In the possible situation where a request has been made for an Air Force related classified technology or technological information, the case category type will be determined by HQ AFOSI/IVO. This decision will be influenced by the local prosecutive jurisdiction's decision on how they plan to prosecute.

e. Technology transfer investigations may include allegations into illegal attempts to acquire spare part items, as well as sensitive items critical to Air Force interests. However, Case Type 88 does not include investigations under the USAF program "HARVEST SECURE" for spare part diversions. Rather, they could surface as a request for support from civilian law enforcement after their source has identified a third party in possession of or seeking Air Force related technologies or systems. For example, a source may receive information that an unauthorized foreign entity is orchestrating an illegal attempt to acquire U.S. technologies. The foreign entity may be represented by a third party, a U.S. citizen or other foreign national, who is illegally attempting to acquire C-130 maintenance (spare) parts and F-15 (sensitive) gyroscopes. These investigations give rise to concerns among criminal, CI, and possibly fraud interests and must be monitored accordingly. Each case must be evaluated independently. Should a case category conflict arise that cannot be settled within the district, HQ OPRs will decide the appropriate category.

5. Use of Air Force Related Technologies, Equipment, or Information During Joint Investigative Activity with Civilian Law Enforcement. AFOSI is authorized to conduct joint investigations with civilian law enforcement when there is a direct USAF interest. AFOSI is the single point of contact with civilian law enforcement regarding investigative activity. USCS and the FBI are defined as civilian law enforcement in AFR 55-35, Air Force Assistance to Civilian Law Enforcement. Should a civilian law enforcement agency contact AFOSI with information concerning illegal technology transfer of Air Force materials, wishing to conduct a joint investigation, and requesting AFOSI obtain USAF materials for use in a "buy-bust" activity, AFOSI is authorized to do so.

a. In this investigative activity it must be made clear the material, e.g., Maverick missile, is being loaned from an Air Force activity, such as wing, depot, or MAJCOM commander to AFOSI. The material is not being loaned to the civilian law enforcement agency. AFOSI can coordinate all material acquisition and logistics with the loaning activity, but AFOSI must maintain custody, protection, and responsibility at all times. This requires AFOSI agents to be present with the joint investigative agency during the "buy-bust" to ensure the material does not leave AFOSI custody. Custody, protection, and responsibility can be afforded through appropriately approved technical means.

b. Because of the dollar value associated with the materials used as "flash" in these joint investigations, extreme care must be taken to ensure the items never leave AFOSI custody and protection. The AFOSI agent receipting for these items must be aware he or she may be held financially responsible for damage, loss, or both if negligence is proven, e.g., report of survey.

c. When attempting to locate items for use as "flash" in these investigations, the official loaning it to AFOSI may also be held responsible for loss, damage, or both. Depending on the requested item, e.g., munitions, gyroscope, strong consideration should be given to briefing the appropriate MAJCOM representative, so the loaner's commander is not caught off-guard for any reason. Also, the potential loaner may wish

the MAJCOM commander to be the approval level for such assistance. Since these are intra-USAF loans, HQ USAF approval is not needed.

d. Request for use of Air Force materials in technology transfer investigations must be promptly channeled to HQ AFOSI/IVOX. This allows HQ AFOSI/IVOX to answer any questions HQ USAF may have if they are contacted by the potential loaner of the MAJCOM.

6. Intelligence Oversight. Technology transfer cases are investigations into criminal activities. As such the collection, retention, and dissemination of such information does not conflict with AFOSIR 124-91, Procedures Governing the Counterintelligence Activities of AFOSI that Affect United States Persons.

7. Case Type 332 - Technology Transfer Briefings. A Case Type 332 should be initiated when providing briefings and presentations to various audiences concerning technology transfer and the loss of USAF scientific and technological information. The briefings may be prepared by HQ AFOSI, districts, or detachments. In order to prepare effective briefings, districts are encouraged to become familiar with Air Force related technologies being researched, developed, used, or manufactured in their areas. Briefings should address the targeting, methodologies, and collection requirements of foreign entities as these elements may impact upon the Air Force mission.

8. Reporting Procedures:

a. Technology transfer briefings will be reported on the AFOSI Form 185, CACTIS Briefing/Training Record, in accordance with (IAW) AFOSIR 178-7, Management Effectiveness Profiling System (MEPS), as Case Type 332.

b. Case Type 88 investigative reporting will be in the form of an Report of Investigation (ROI) IAW AFOSIR 124-21, Report Writing, and published in draft every 60 days until closed.

c. In cases where investigative information responsive to IVOA established collection requirements surfaces, an Intelligence Information

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Report or Counterintelligence Intelligence Collection Report must also be prepared and classified appropriately.

d. Case numbering will be consistent with AFOSIR 178-6, AFOSI Investigative Case Categories and Case File Numbering System. Case files will be forwarded to HQ AFOSI/VOX within 30 days of closure or receipt of command action, as appropriate and handled IAW AFOSIR 12-2, Processing and Management of Closed AFOSI Investigative Case Files, Table 2.

e. For Case Types 88, complete Case Survey Forms IAW AFOSIR 178-2, The Case Survey Reporting System, and report via AFOSI Form 98, MEPS Investigative/Operational Data Collection Worksheet, IAW AFOSIR 178-7.

f. AFOSIR 124-68, Undercover Operations, details specific reporting requirements when an AFOSI agent or an AFOSI source is used in an undercover capacity. Refer to AFOSIR 124-68 whenever undercover agents are used.

OFFICIAL

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Summary of Changes

The title of the regulation changed. The regulation was changed to create a new case type for technology transfer investigations (88), and delete the requirement for a 388 Case Type. Changed the term foreign government to foreign entity to reflect the illegal acquisition of USAF technologies and systems by any foreign entity. Explained the relationship between AFOSI and civilian law enforcement agencies in the conduct of joint investigations and the acquisition or use of Air Force materials as "flash." Deleted the requirement for Spot Reports.

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